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## **OLR Bill Analysis**

**sSB 971**

### ***AN ACT CONCERNING A MODERN METHOD OF FORECLOSURE.***

#### **SUMMARY:**

By law, in a foreclosure proceeding involving real property, the court may issue a decree of sale or a strict foreclosure. This bill adds an additional option, foreclosure by market sale, which is a court-approved sale on the open market. This bill limits this option to one-to-four family residential real property that is the mortgagor's principal residence.

The bill allows any party to a foreclosure action to file a motion for a foreclosure by market sale and requires that the motion include a proposed marketing plan to be approved by the court. The property must be marketed for at least 120 days from the date of approval.

The bill specifies how offers can be made and approved by the court.

The bill requires the court to set a sale date at least 45 days from the date of approval of an offer. It requires that the sales proceeds be brought to court to determine the amount to which each party is entitled. It also requires the court to determine and approve the payment of certain expenses, including marketing and sales expenses. It specifies that in a foreclosure by market sale, the mortgagor must convey title to the purchaser.

EFFECTIVE DATE: October 1, 2013

#### **FORECLOSURE BY MARKET SALE**

##### ***Proposed Marketing Plan***

A motion for a foreclosure by market sale must include a proposed marketing plan for court approval. A proposed marketing plan:

1. may include listing the property for sale with a real estate broker or real estate salesperson if their proposed compensation is also included,
2. must describe the planned advertisement as well as the proposed cost,
3. must require that offers are provided as soon as possible and presented for court-approval before the fixed date, and
4. must include a copy of a certified appraisal of the property to be performed by the mortgagee.

If the court approves the plan, the property must be marketed for at least 120 days from the date of approval.

### ***Written Offers***

The bill requires offers to be in writing and requires the court to have a hearing to determine approval if the offer received is in the best interest of the parties to the foreclosure. The court may not reject an offer solely because it contains contingencies for financing or inspections of the property. But, the absence of contingencies to an offer may be considered in deciding which of several competing offers is in the parties' best interests.

The court may extend the deadline for offers for good cause, such as allowing reasonable time for a person who has made an offer to meet the contingencies in the offer.

If no acceptable offer is received by the fixed date, the court may extend the marketing period or revert to one of the foreclosure options available under current law - issue a decree of sale or a decree of strict foreclosure (see BACKGROUND).

### ***Sale and Conveyance of Title***

The bill requires the court to set a sale date which must be at least 45 days after the sale has been ordered. The court may extend the deadline for good cause.

The sales proceeds must be brought into court to determine the amount to which each party is entitled. The court must approve the payment of conveyance taxes, encumbrances having priority over the interests to be foreclosed, marketing and sale expenses such as real estate broker or salesperson compensation, recording fees and reasonable attorney's fees for the seller's attorney to be paid on the date of closing.

The bill specifies that in a foreclosure by market sale, the mortgagor must transfer title to the purchaser.

## **BACKGROUND**

### ***Foreclosure by Sale***

With a decree of sale, the court (1) establishes the time and manner of the sale, (2) appoints a committee to sell the property, and (3) appoints three appraisers to determine the value of the property. The borrower may stop the foreclosure proceedings at any time before the sale by paying the balance due on the mortgage. If no such payment is made, the committee will go forward with the sale. The lender may sue to obtain a deficiency judgment.

### ***Strict Foreclosure***

With strict foreclosure, no actual foreclosure sale is held. Instead, the lender goes to court to try and obtain a court order demonstrating the borrower is in default of the mortgage. If successful, the title transfers to the lender immediately. However, the court sets an established amount of time in which the borrower may redeem the property, but if he or she fails to do so, the title becomes absolute to the lender and the borrower no longer has any claim to the property. The lender then has 30 days to record a certificate of foreclosure, which must contain a description of the property, the foreclosure proceedings, the mortgage and the date the title became absolute.

## **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 15 Nay 2 (03/14/2013)